

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that House Bill 1386 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
2       paragraph and insert:  
3       "SECTION 1. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE  
4       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5       1, 2007]: **Sec. 11. "Tier 1 sex offender" means a sex offender who**  
6       **is not a Tier 2 or Tier 3 sex offender.**  
7       SECTION 2. IC 11-8-1-12 IS ADDED TO THE INDIANA CODE  
8       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
9       1, 2007]: **Sec. 12. "Tier 2 sex offender" means:**  
10       **(1) a person who has been convicted of one (1) or more of the**  
11       **following offenses:**  
12       **(A) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)),**  
13       **if the victim is less than eighteen (18) years of age.**  
14       **(B) Sexual trafficking of a minor (IC 35-42-3.5-1(b)).**  
15       **(C) Human trafficking (IC 35-42-3.5-1(c)(3)), if the victim**  
16       **is less than eighteen (18) years of age.**  
17       **(D) Promoting prostitution (IC 35-45-4-4), if the victim is**  
18       **less than eighteen (18) years of age.**  
19       **(E) Sexual battery (IC 35-42-4-8), if the victim is at least**  
20       **thirteen (13) years of age but less than eighteen (18) years**  
21       **of age.**  
22       **(F) Vicarious sexual gratification involving:**  
23       **(i) the use of force or a controlled substance**  
24       **(IC 35-42-4-5(a)(2)); or**  
25       **(ii) serious bodily injury (IC 35-42-4-5(a)(3);**  
26       **if the victim is at least thirteen (13) years of age.**  
27       **(G) Child exploitation (IC 35-42-4-4(b)).**  
28       **(H) Child seduction (IC 35-42-4-7).**  
29       **(I) An attempt or a conspiracy to commit an offense**  
30       **described in clauses (A) through (H); or**  
31       **(2) a person who, being a Tier 1 sex offender, is convicted of**

1           a subsequent sex offense.

2       **The term does not include a person who is a Tier 3 sex offender.**

3       SECTION 3. IC 11-8-1-13 IS ADDED TO THE INDIANA CODE  
4       AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5       1, 2007]: **Sec. 13. "Tier 3 sex offender" means the following:**

6           **(1) A person convicted of one (1) of the following offenses:**

7               **(A) Rape (IC 35-42-4-1).**

8               **(B) Criminal deviate conduct (IC 35-42-4-2).**

9               **(C) Child molesting (IC 35-42-4-3).**

10              **(D) Kidnapping (IC 35-42-3-2), if the victim is less than**  
11              **eighteen (18) years of age, and the person who kidnapped**  
12              **the victim is not the victim's parent or guardian.**

13              **(E) Criminal confinement (IC 35-42-3-3), if the victim is**  
14              **less than eighteen (18) years of age and the person who**  
15              **confined or removed the victim is not the victim's parent**  
16              **or guardian.**

17              **(F) Sexual battery (IC 35-42-4-8), if the victim is less than**  
18              **thirteen (13) years of age.**

19              **(G) Vicarious sexual gratification involving:**

20                  **(i) the use of force or a controlled substance**  
21                  **(IC 35-42-4-5(a)(2)); or**

22                  **(ii) serious bodily injury (IC 35-42-4-5(a)(3);**  
23              **if the victim is less than thirteen (13) years of age.**

24              **(H) An attempt or a conspiracy to commit an offense**  
25              **described in clauses (A) through (G).**

26           **(2) A child who is adjudicated as a delinquent child for an act**  
27           **that, if committed by an adult, would constitute:**

28               **(A) rape (IC 35-42-4-1);**

29               **(B) criminal deviate conduct (IC 35-42-4-2); or**

30               **(C) child molesting involving sexual intercourse**  
31               **(IC 35-42-4-3(a));**

32              **if the child was at least fourteen (14) years of age at the time**  
33              **the offense was committed.**

34           **(3) A person who, being a Tier 2 sex offender, is convicted of**  
35           **a subsequent sex offense."**

36       Page 2, line 36, after "(C)" insert **"unless the delinquent act**  
37       **committed by the child would, if committed by an adult, be:**

38                  **(i) rape (IC 35-42-4-1);**

39                  **(ii) criminal deviate conduct (IC 35-42-4-2); or**

40                  **(iii) child molesting involving sexual intercourse**  
41                  **(IC 35-42-4-3(a));".**

42       Page 2, line 36, begin a new line double block indented beginning  
43       with "is".

44       Page 2, delete lines 39 through 42.

45       Page 3, delete lines 1 through 31, begin a new paragraph, and insert:

46       "SECTION 5. IC 11-8-8-7, AS ADDED BY P.L.173-2006,  
47       SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2007]: Sec. 7. (a) Subject to section 19 of this chapter, the following persons must register under this chapter:

(1) A sex offender who resides in Indiana. A sex offender resides in Indiana if either of the following applies:

(A) The sex offender spends or intends to spend at least seven (7) days (including part of a day) in Indiana during a one hundred eighty (180) day period.

(B) The sex offender owns real property in Indiana and returns to Indiana at any time.

(2) A sex offender who works or carries on a vocation or intends to work or carry on a vocation full-time or part-time for a period:

(A) exceeding fourteen (14) consecutive days; or

(B) for a total period exceeding thirty (30) days;

during any calendar year in Indiana, whether the sex offender is financially compensated, volunteered, or is acting for the purpose of government or educational benefit.

(3) A sex offender who is enrolled or intends to be enrolled on a full-time or part-time basis in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education in Indiana.

(b) Except as provided in subsection (e), a sex offender who resides in Indiana shall register with the local law enforcement authority in the county where the sex offender resides. If a sex offender resides in more than one (1) county, the sex offender shall register with the local law enforcement authority in each county in which the sex offender resides. If the sex offender is also required to register under subsection (a)(2) or (a)(3), the sex offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (c) or (d).

(c) A sex offender described in subsection (a)(2) shall register with the local law enforcement authority in the county where the sex offender is or intends to be employed or carry on a vocation. If a sex offender is or intends to be employed or carry on a vocation in more than one (1) county, the sex offender shall register with the local law enforcement authority in each county. If the sex offender is also required to register under subsection (a)(1) or (a)(3), the sex offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (d).

(d) A sex offender described in subsection (a)(3) shall register with the local law enforcement authority in the county where the sex offender is enrolled or intends to be enrolled as a student. If the sex offender is also required to register under subsection (a)(1) or (a)(2), the sex offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b) or (c).

(e) A sex offender described in subsection (a)(1)(B) shall register

with the local law enforcement authority in the county in which the real property is located. If the sex offender is also required to register under subsection (a)(1)(A), (a)(2), or (a)(3), the sex offender shall also register with the local law enforcement authority in the county in which the offender is required to register under subsection (b), (c), or (d).

(f) A sex offender committed to the department shall register with the department before the sex offender is released from incarceration. The department shall forward the sex offender's registration information to the local law enforcement authority of every county in which the sex offender is required to register.

(g) ~~This subsection does not apply to a sex offender who is a sexually violent predator.~~ A sex offender not committed to the department shall register not more than ~~seven (7) days~~ **seventy-two (72) hours** after the sex offender:

- (1) is released from a penal facility (as defined in IC 35-41-1-21);
- (2) is released from a secure private facility (as defined in IC 31-9-2-115);
- (3) is released from a juvenile detention facility;
- (4) is transferred to a community transition program;
- (5) is placed on parole;
- (6) is placed on probation;
- (7) is placed on home detention; or
- (8) arrives at the place where the sex offender is required to register under subsection (b), (c), or (d);

whichever occurs first. A sex offender required to register in more than one (1) county under subsection (b), (c), (d), or (e) shall register in each appropriate county not more than seventy-two (72) hours after the sex offender's arrival in that county or acquisition of real estate in that county.

(h) ~~This subsection applies to a sex offender who is a sexually violent predator. A sex offender who is a sexually violent predator shall register not more than seventy-two (72) hours after the sex offender:~~

- ~~(1) is released from a penal facility (as defined in IC 35-41-1-21);~~
- ~~(2) is released from a secure private facility (as defined in IC 31-9-2-115);~~
- ~~(3) is released from a juvenile detention facility;~~
- ~~(4) is transferred to a community transition program;~~
- ~~(5) is placed on parole;~~
- ~~(6) is placed on probation;~~
- ~~(7) is placed on home detention; or~~
- ~~(8) arrives at the place where the sexually violent predator is required to register under subsection (b); (c); or (d);~~

~~whichever occurs first. A sex offender who is a sexually violent predator required to register in more than one (1) county under subsection (b); (c); (d); or (e) shall register in each appropriate county not more than seventy-two (72) hours after the offender's arrival in that county or acquisition of real estate in that county.~~

(h) The local law enforcement authority with whom a sex offender registers under this section shall make and publish a photograph of the sex offender on the Indiana sex offender registry web site established under IC 36-2-13-5.5. The local law enforcement authority shall make a photograph of the sex offender that complies with the requirements of IC 36-2-13-5.5 ~~at least once per year.~~ **every time the sex offender registers in person.** The sheriff of a county containing a consolidated city shall provide the police chief of the consolidated city with all photographic and computer equipment necessary to enable the police chief of the consolidated city to transmit sex offender photographs (and other identifying information required by IC 36-2-13-5.5) to the Indiana sex offender registry web site established under IC 36-2-13-5.5. In addition, the sheriff of a county containing a consolidated city shall provide all funding for the county's financial obligation for the establishment and maintenance of the Indiana sex offender registry web site established under IC 36-2-13-5.5.

(i) When a sex offender registers **or updates a registration**, the local law enforcement authority shall:

(1) immediately update the Indiana sex offender registry web site established under IC 36-2-13-5.5; ~~and~~

(2) notify every law enforcement agency having jurisdiction in the county where the sex offender resides; ~~and~~

**(3) notify every school and public housing agency in each county where the sex offender is required to register.**

The local law enforcement authority shall provide the department, ~~and~~ a law enforcement agency described in subdivision (2), **and a school and public housing agency described in subdivision (3)** with the information provided by the sex offender during registration.

SECTION 6. IC 11-8-8-8, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. The registration required under this chapter must include the following information:

(1) The sex offender's full name, alias, any name by which the sex offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks, or tattoos, Social Security number, driver's license number or state identification number, principal residence address, and mailing address, if different from the sex offender's principal residence address.

(2) A description of the offense for which the sex offender was convicted, the date of conviction, the county of the conviction, the cause number of the conviction, and the sentence imposed, if applicable.

(3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this chapter, the name and address of each of the sex offender's employers in Indiana, the name and address of each campus or location where the sex offender is enrolled in school in

Indiana, and the address where the sex offender stays or intends to stay while in Indiana.

(4) A recent photograph of the sex offender.

(5) If the sex offender is a sexually violent predator, that the sex offender is a sexually violent predator.

(6) If the sex offender is required to register for life, that the sex offender is required to register for life.

**(7) The license plate number and a description of any vehicle owned or operated by the sex offender.**

~~(7)~~ **(8)** Any other information required by the department.

SECTION 7. IC 11-8-8-14, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. ~~At least once per calendar year;~~ **(a)** A sex offender who is required to register under this chapter shall:

(1) report in person to the local law enforcement authority;

(2) register; and

(3) be photographed by the local law enforcement authority;

in each location where the offender is required to register **as often as required under subsection (b).**

**(b) A sex offender shall report, register, and be photographed as required under subsection (a) as follows:**

**(1) A tier 1 sex offender shall report, register, and be photographed at least one (1) time per year.**

**(2) A tier 2 sex offender shall report, register, and be photographed at least one (1) time every one hundred eighty (180) days.**

**(3) A tier 3 sex offender shall report, register, and be photographed at least one (1) time every ninety (90) days.**

SECTION 8. IC 11-8-8-19, AS ADDED BY P.L.173-2006, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. (a) ~~Except as provided in subsections (b) through (e); a sex offender is required to register under this chapter until the expiration of ten (10) years after the date~~ **The registration period for a sex offender required to register under this chapter begins on the date the sex offender:**

(1) is released from a penal facility (as defined in IC 35-41-1-21) or a secure juvenile detention facility of a state or another jurisdiction;

(2) is placed in a community transition program;

(3) is placed in a community corrections program;

(4) is placed on parole; or

(5) is placed on probation;

whichever occurs last. The department shall ensure that an offender who is no longer required to register as a sex offender is notified that the obligation to register has expired.

**(b) Except as provided in subsection (e), a tier 1 sex offender shall register for fifteen (15) years.**

(c) A tier 2 sex offender shall register for twenty-five (25) years.

(d) Except as provided in subsection (f), a tier 3 sex offender shall register for life.

(e) The fifteen (15) year registration period for a tier 1 sex offender shall be reduced to ten (10) years if the following conditions are met during the first ten (10) years of the registration period:

(1) The sex offender is not convicted of a:

(A) felony; or

(B) sex offense.

(2) The sex offender successfully completes any period of probation, parole, community corrections, community transition, or other period of supervised release, if applicable.

(3) The sex offender successfully completes a sex offender treatment program approved by:

(A) a court;

(B) a community corrections program; or

(C) the department.

(f) The lifetime registration period for a tier 3 sex offender who is classified as a tier 3 sex offender based on the sex offender's adjudication as a delinquent shall be reduced to the period during which the sex offender has already registered as a sex offender if the following conditions are met during any twenty-five (25) year period in which the sex offender is required to register as a tier 3 sex offender:

(1) The sex offender is not convicted of a:

(A) felony; or

(B) sex offense.

(2) The sex offender successfully completes any period of probation, parole, community corrections, community transition, or other period of supervised release, if applicable.

(3) The sex offender successfully completes a sex offender treatment program approved by:

(A) a court;

(B) a community corrections program; or

(C) the department.

(b) A sex offender who is a sexually violent predator is required to register for life.

(c) A sex offender who is convicted of at least one (1) sex offense that the sex offender committed:

(1) when the person was at least eighteen (18) years of age; and

(2) against a victim who was less than twelve (12) years of age at the time of the crime;

is required to register for life.

(d) A sex offender who is convicted of at least one (1) sex offense in which the sex offender:

(1) proximately caused serious bodily injury or death to the victim;

(2) used force or the threat of force against the victim or a member of the victim's family; or  
 (3) rendered the victim unconscious or otherwise incapable of giving voluntary consent;  
 is required to register for life.

(c) A sex offender who is convicted of at least two (2) unrelated sex offenses is required to register for life.

SECTION 9. IC 35-41-1-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 5.5. "Credit restricted felon" means a person who has been convicted of at least one (1) of the following offenses:**

**(1) Child molesting involving intercourse or deviate sexual conduct (IC 35-42-4-3(a), if:**

**(A) the offense is committed by a person at least twenty-one (21) years of age; and**

**(B) the victim is less than twelve (12) years of age.**

**(2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.**

**(3) Murder (IC 35-42-1-1), if:**

**(A) the person killed the victim while committing or attempting to commit child molesting (IC 35-42-4-2);**

**(B) the victim was the victim of a sex crime under IC 35-42-4 for which the person was convicted; or**

**(C) the victim of the murder was listed by the state or known by the person to be a witness against the person in a prosecution for a sex crime under IC 35-42-4 and the person committed the murder with the intent to prevent the person from testifying."**

Page 6, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 13. IC 35-50-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 3. (a) A person assigned to Class I earns one (1) day of credit time for each day ~~he~~ the person is imprisoned for a crime or confined awaiting trial or sentencing.**

**(b) A person assigned to Class II earns one (1) day of credit time for every two (2) days ~~he~~ the person is imprisoned for a crime or confined awaiting trial or sentencing.**

**(c) A person assigned to Class III earns no credit time.**

**(d) A person assigned to Class IV earns one (1) day of credit for every six (6) days the person is imprisoned for a crime or confined awaiting trial or sentencing.**

SECTION 14. IC 35-50-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 4. (a) A person who is not a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing is initially assigned to Class I.**

**(b) A person who is a credit restricted felon and who is imprisoned for a crime or imprisoned awaiting trial or sentencing**



1 **is initially assigned to Class IV. A credit restricted felon may not**  
 2 **be assigned to Class I or Class II.**

3 ~~(b)~~ **(c)** A person **who is not assigned to Class IV** may be reassigned  
 4 to Class II or Class III if ~~he~~ **the person** violates any of the following:

5 (1) A rule of the department of correction.

6 (2) A rule of the penal facility in which ~~he~~ **the person** is  
 7 imprisoned.

8 (3) A rule or condition of a community transition program.

9 However, a violation of a condition of parole or probation may not be  
 10 the basis for reassignment. Before a person may be reassigned to a  
 11 lower credit time class, ~~he~~ **the person** must be granted a hearing to  
 12 determine ~~his~~ **the person's** guilt or innocence and, if found guilty,  
 13 whether reassignment is an appropriate disciplinary action for the  
 14 violation. The person may waive ~~his~~ **the** right to the hearing.

15 **(d) A person who is assigned to Class IV may be reassigned to**  
 16 **Class III if the person violates any of the following:**

17 (1) A rule of the department of correction.

18 (2) A rule of the penal facility in which the person is  
 19 imprisoned.

20 (3) A rule or condition of a community transition program.

21 **However, a violation of a condition of parole or probation may not**  
 22 **be the basis for reassignment. Before a person may be reassigned**  
 23 **to Class III, the person must be granted a hearing to determine the**  
 24 **person's guilt or innocence and, if found guilty, whether**  
 25 **reassignment is an appropriate disciplinary action for the**  
 26 **violation. The person may waive the right to the hearing.**

27 ~~(c)~~ **(e)** In connection with the hearing granted under subsection ~~(b)~~;  
 28 **(c) or (d)**, the person is entitled to:

29 (1) have not less than twenty-four (24) hours advance written  
 30 notice of the date, time, and place of the hearing, and of the  
 31 alleged misconduct and the rule the misconduct is alleged to have  
 32 violated;

33 (2) have reasonable time to prepare for the hearing;

34 (3) have an impartial decisionmaker;

35 (4) appear and speak in ~~his~~ **the person's** own behalf;

36 (5) call witnesses and present evidence;

37 (6) confront and cross-examine each witness, unless the hearing  
 38 authority finds that to do so would subject a witness to a  
 39 substantial risk of harm;

40 (7) have the assistance of a lay advocate (the department may  
 41 require that the advocate be an employee of, or a fellow prisoner  
 42 in, the same facility or program);

43 (8) have a written statement of the findings of fact, the evidence  
 44 relied upon, and the reasons for the action taken;

45 (9) have immunity if ~~his~~ **the person's** testimony or any evidence  
 46 derived from ~~his~~ **the person's** testimony is used in any criminal  
 47 proceedings; and

(10) have ~~his~~ **the person's** record expunged of any reference to the charge if ~~he~~ **the person** is found not guilty or if a finding of guilt is later overturned.

Any finding of guilt must be supported by a preponderance of the evidence presented at the hearing.

~~(d)~~ **(f)** A person may be reassigned from Class III to Class I, ~~or~~ Class II, **or Class IV**, or from Class II to Class I. A person's assignment to Class III or Class II shall be reviewed at least once every six (6) months to determine if ~~he~~ **the person** should be reassigned to a higher credit time class. **A credit restricted felon may not be reassigned to Class I or Class II.**

SECTION 15. IC 35-50-6-5, AS AMENDED BY P.L.173-2006, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A person may, with respect to the same transaction, be deprived of any part of the credit time the person has earned for any of the following:

(1) A violation of one (1) or more rules of the department of correction.

(2) If the person is not committed to the department, a violation of one (1) or more rules of the penal facility in which the person is imprisoned.

(3) A violation of one (1) or more rules or conditions of a community transition program.

(4) If a court determines that a civil claim brought by the person in a state or an administrative court is frivolous, unreasonable, or groundless.

(5) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to register before being released from the department as required under IC 11-8-8-7.

(6) If the person is a sex offender (as defined in IC 11-8-8-5) and refuses to participate in a sex offender treatment program specifically offered to the sex offender by the department of correction while the person is serving a period of incarceration with the department of correction.

However, the violation of a condition of parole or probation may not be the basis for deprivation. Whenever a person is deprived of credit time, ~~he~~ **the person** may also be reassigned to Class II **(if the person is not a credit restricted felon)** or Class III.

(b) Before a person may be deprived of earned credit time, the person must be granted a hearing to determine the person's guilt or innocence and, if found guilty, whether deprivation of earned credit time is an appropriate disciplinary action for the violation. In connection with the hearing, the person is entitled to the procedural safeguards listed in ~~section 4(c)~~ **section 4(e)** of this chapter. The person may waive the person's right to the hearing.

(c) Any part of the credit time of which a person is deprived under this section may be restored."

- 1 Page 6, line 29, after "2007]" insert "(a)".
- 2 Page 6, after line 31, begin a new paragraph and insert:
- 3 **"(b) IC 35-41-1-5.5, as added by this act, and IC 35-50-6-3,**
- 4 **IC 35-50-6-4, and IC 35-50-6-5, all as amended by this act, apply**
- 5 **only to persons convicted after June 30, 2007."**
- 6 Renumber all SECTIONS consecutively.  
(Reference is to EHB 1386 as printed March 13, 2007.)

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Senator DROZDA